Supreme Court, U. S.
FILED
MAR 14 197
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976
Nos. 76-1121, 76-1153 and 76-1162

No. 76-1121
AMERICAN BROADCASTING COMPANIES, INC., and NATIONAL BROADCASTING COMPANY, INC.,
Petitioners,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1153
ASSOCIATION OF MOTION PICTURE AND TELEVISION PRODUCERS, INC.,
Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INC.,
Respondent.

No. 76-1162
NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

WRITERS GUILD OF AMERICA, WEST, INCORPORATED.

Respondent Writers Guild of America, West, Inc. Brief in Opposition to Petitions for Certiorari.

JULIUS REICH, a Member of
REICH, ADELL & CROST,
A Professional Law Corporation,
1411 West Olympic Blvd., Suite 301,
Los Angeles, Calif. 90015,
(213) 386-3860,
Attorneys for Respondent, Writers Guild of America, West, Inc.

Of Counsel:
PAUL P. SELVIN.

Parker & Son, Inc., Law Printers, Los Angeles. Phone 724-6622

SUBJECT INDEX

	Page
Introduction	1
Statement of the Case	1
Reasons for Denying the Writs	3
A. The Purported Conflict in the Circuits Is Based on Factual Differences	3
B. The Purported Important Issues of Law Are Resolvable by the Parties	4
Conclusion	5

TABLE OF AUTHORITIES CITED

Cases

American Fed'n of Musicians v. Harrah's Club, Inc., U.S. Sup. Ct. No. 71-261	5
Beasley v. Food Fair, 416 U.S. 653 (1974)	4
Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641, 417 U.S. 790 (1974)	3, 4
NLRB v. News Syndicate Co., 365 U.S. 695 (1961)	4

Statutes

National Labor Relations Act, Sec. 2(3)	4
National Labor Relations Act, Sec. 8(b)(1)(B)	2, 3
United States Code, Title 29, Sec. 152(3)	4
United States Code, Title 29, Sec. 158(b)(1)(B)	2, 3

Statement of the Case.

In the television film and motion picture industry there is a highly skilled employee who functions in multiple capacities. This individual is a writer who may also produce or direct, either at the same time he writes, or only on occasion. He is known as a "hyphenate," such as a "writer-producer" or a "writer-director."

As a producer or director, the hyphenate is a supervisor within the meaning of the National Labor Relations Act, having the power to employ or terminate writers and others. As a writer, he is a rank-and file-employee. His writing services are covered by the Guild's collective bargaining agreement.

During the course of a strike in 1973 by the Guild, some of the hyphenates—members of the Guild—crossed its picket lines and were disciplined.

There is substantial evidence that once across the picket lines and inside their employers' premises, the hyphenates not only produced and directed, but performed "writing services" as well, as defined in the Guild's collective bargaining agreement. And contrary to the statement in the petitions for certiorari, there was no evidence that any disciplined hyphenate—either before, during or after the strike—performed collective bargaining functions vis-a-vis the disciplining union or its members.[1] Nor, contrary to the findings of the Administrative Law Judge, was there any substantial evidence of grievance adjustment functions on the part of the hyphenates.

---

[1]The significance of this is that § 8(b)(1)(B) of the National Labor Relations Act, 29 U.S.C. § 158(b)(1)(B) prohibits certain conduct where the object is to restrain or coerce an employer in the selection of his representatives for the purpose of collective bargaining or the adjustment of grievances.

REASONS FOR DENYING THE WRITS.

A. The Purported Conflict in the Circuits Is Based on Factual Differences.

While the result reached by the court below differs from that of the Seventh and District of Columbia circuits, there are also dissimilar facts in the cases. Here, the hyphenates had no collective bargaining functions, and little if any grievances adjustment functions as to other members of the Guild.[2] Moreover, the producing or directing functions of the hyphenates included writing services as well.

In light of this, there will be difficulty in this case in getting to those legal issues the petitioners contend need to be resolved, since there is a dispute first, over whether the hyphenates are § 8(b)(1)(B)-type supervisors, and second, as to whether they performed rank-and-file work during the strike and thus were clearly subject to discipline under the rule of *Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641*, 417 U.S. 790 (1974).

---

[2]It is not every supervisor that is covered by § 8(b)(1)(B), but only those who engage in collective bargaining or who adjust grievances. 29 U.S.C. § 158(b)(1)(B). (The Guild argued below that there was no evidence of such functions on the part of hyphenates vis-a-vis writers but in light of the Second Circuit's disposition of the case there was no need to, nor did the court reach that issue.)

B. The Purported Important Issues of Law Are Resolvable by the Parties.

The petitioners' alternate contention that certiorari should be granted to resolve important issues of law, is equally without merit. In fact, Congress gave to the employer-petitioners (the Networks and the Association) and to employers generally, more than sufficient weapons for self-help in this area.

In 1947, Congress amended the definition of "employee" in § 2(3) of the National Labor Relations Act, 29 U.S.C. § 152(3), to exclude supervisors from the Act's coverage. Since then, supervisors have not been entitled to the benefits of this law in terms of protection from either their employers or unions. *See Florida Power & Light Co. v. International Bhd. of Elec. Workers, Local 641*, 417 U.S. 790, 807-08 (1974); *Beesley v. Food Fair*, 416 U.S. 653, 656 (1974) ("Taft-Hartley amendments exclude supervisors from the protections of the Act").

The legislative scheme is to permit employers to secure their supervisors' loyalty on pain of discharge, through requiring the supervisors to sever their membership and fraternal relations with unions. *Florida Power, supra*, 417 U.S. at 807-08. Where the employer wishes to permit a supervisor to retain union connections because it is in the employer's interest (as was the case here [Network petition, A-45; Association petition, appendix, at 56]), the employer may protect the supervisor from intra-union discipline through the collective bargaining process. *See NLRB v. News Syndicate Co.*, 365 U.S. 695, 696 (1961) (collective bargaining clause protects supervisor); *Florida Power, supra*, 417 U.S. at 796 (*ibid.*). On the other hand, where, as in this case, the employer has permitted

supervisors to honor picket lines, the employer cannot complain when the supervisors refuse to cross their union's picket line, either voluntarily or by compulsion.

For the petitioners to say that "[t]his issue is . . . of paramount importance in the area of federal labor law and desperately needs to be authoritatively decided," Association petition at 11, is, under the circumstances, pure hyperbole. There is no need for demands on this Court's time simply to argue for a concession that the Association and the Networks, in a highly unique industry,[8] are either unable or unwilling to secure through collective bargaining.

Under the Congressional scheme, the issue presented is best left to the bargaining table. The result reached by the Second Circuit was correct, and that decision should not be disturbed.

Conclusion.

For these reasons, the petitions should be denied.

Respectfully submitted,

JULIUS REICH, a Member of
REICH, ADELL & CROST,
A Professional Law Corporation,
Attorneys for Respondent, Writers Guild of America, West, Inc.

Of Counsel:
PAUL P. SELVIN.

---

[8] In *American Fed'n of Musicians v. Harrah's Club, Inc.*, U.S. Sup. Ct. No. 71-261, the Solicitor General explained why certiorari was not sought in that case, by saying that "*since labor-management relations in the entertainment industry are somewhat unique*, the present case presents an inappropriate vehicle for seeking further clarification of the difficult line between lawful primary, and unlawful secondary activity." Memorandum for the National Labor Relations Board, at 3 (emphasis added).